IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JACK WAULK,

      Petitioner,

    v.   **CASE NO. 2:05-cv-674**

                                     JUDGE GRAHAM
STATE OF OHIO,   **MAGISTRATE JUDGE KEMP**

      Respondent.

OPINION AND ORDER

On January 26, 2006, the Magistrate Judge issued a *Report and Recommendation* recommending that this action be dismissed as barred by the one-year statute of limitations under 28 U.S.C. §2244(d). The Magistrate Judge also denied petitioner's request for release on bail, monetary damages, expungement of his record, and the appointment of counsel. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation.* Petitioner also objects to all of the orders of the Magistrate Judge denying his requests for release on bail, monetary damages, expungement of his record, and the appointment of counsel.

For the reasons that follow, petitioner's objections are **OVERRULED** and this action is hereby **DISMISSED.** Petitioner's motion for leave to supplement his objections with the arguments attached therein, Doc. No. 21, is **GRANTED**.

Petitioner objects to all of the Magistrate Judge's conclusions. He again raises all of the same arguments that were previously presented. Petitioner again requests monetary damages for his allegedly wrongful incarceration and malicious prosecution. *Objections*, at 3, Doc. No. 20. He argues that a dismissal of the petition as untimely constitutes an illegal suspension of the writ. *Id.,*

at 4. Such argument is without merit.

> Numerous courts have concluded that § 2244(d) does not constitute an unconstitutional suspension of the writ of habeas corpus. *Wyzykowski v. Dep't of Corr.*, 226 F.3d 1213, 1217 (11th Cir.2000); *Lucidore v. New York State Div. of Parole*, 209 F.3d 107, 113 (2d Cir.), *cert. denied*, 531 U.S. 873, 121 S.Ct. 175, 148 L.Ed.2d 120 (2000); *Molo v. Johnson*, 207 F.3d 773, 775 (5th Cir.2000); *Miller v. Marr*, 141 F.3d 976, 978 (10th Cir.1998).

Saylor v. Mack, unpublished, 27 Fed.Appx. 321, 323 (6th Cir. September 17, 2001).

Petitioner also objects to the Magistrate Judge "presiding" over his criminal case.

Supplemental Objections, Doc. No. 21, at 2. Pursuant to 28 U.S.C. §636(b)(1),

> (B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, ... of applications for posttrial ... relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

> (C) the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

> Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Id. (footnote omitted); *see also Flournoy v. Marshall*, 842 F.2d 875 (6th Cir. 1988)(citations omitted). Such are the circumstances here.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by petitioner. For the reasons discussed in

the Magistrate Judge's *Order and Report and Recommendation*, petitioner's objections are **OVERRULED**.

The *Order and Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED.**

IT IS SO ORDERED.

<u>s/James L. Graham</u>
 JAMES L. GRAHAM
 United States District Judge

DATE: February 23, 2006